

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

UNITED STATES OF AMERICA	§	
	§	Criminal Action No. H-09-199
v.	§	
	§	Civil Action No. H-12-0211
ESTEBAN MARTINEZ.	§	

ORDER OF DISMISSAL

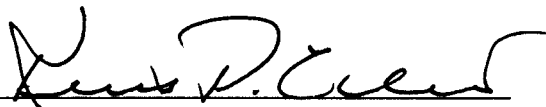
Defendant Esteban Martinez, proceeding *pro se*, filed this section 2255 motion to vacate, correct, or set aside his sentence. (Docket Entry No. 460.) The Government filed a response (Docket Entry No. 486), arguing that the motion should be dismissed as barred by the one-year statute of limitations provided in 28 U.S. C. § 2255(f).

The one-year limitation in this case commenced on the date Defendant's judgment of conviction became final for purposes of section 2255. 28 U.S. C. § 2255(f)(1). Defendant's judgment was entered November 11, 2010. No motion for new trial was filed, and no appeal was taken. Accordingly, Defendant's judgment of conviction became final on November 26, 2010, and limitations expired one year later, on November 26, 2011. Defendant did not file the instant section 2255 motion until January 18, 2012, well after expiration of limitations. Defendant acknowledged in his pleadings that his motion was untimely. (Docket Entry No. 464, p. 2: "I'm aware that I'm already over my one year limit to file my 2255[.]").

Because his motion showed on its face that it was barred by limitations, the Court ordered Defendant to show cause, by written response due May 9, 2014, why his motion should not be denied as barred by limitations. To-date, Defendant has failed to respond to the show cause order. Defendant's motion and pleadings do not establish any grounds for application of sections 2255(f)(2), (3), or (4), and no allegations showing entitlement to equitable tolling are presented. Accordingly, this motion is barred by limitations.

Defendant's motion to vacate, correct, or set aside his sentence under 28 U.S. C. § 2255(f) (Docket Entry No. 460) is **DENIED** as barred by limitations. A certificate of appealability is **DENIED**. The Clerk of Court is **ORDERED** to administratively close Defendant's related civil case in C.A. No. H-12-0211.

Signed at Houston, Texas, on this the 22nd day of May, 2014.



KEITH P. ELLISON
UNITED STATES DISTRICT JUDGE